



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

[DOCKET NUMBER NASA- 2014-0008]

RIN: 2700-AE04

Procedures for Disclosure of Records under the Freedom of Information Act (FOIA)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final Rule.

SUMMARY: This rule revises the National Aeronautics and Space Administration (NASA) Freedom of Information Act (FOIA) regulations that the Agency follows in processing records under the FOIA. The revisions clarify and update procedures for requesting information from the Agency, as well as procedures that the Agency follows in responding to requests from the public. The revisions also incorporate clarifications and updates resulting from changes to the FOIA and case law. Finally, the revisions include current cost figures to be used in calculating and charging fees and increase the amount of information that members of the public may receive from the Agency without being charged processing fees.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Miriam Brown-Lam, (202) 358-0718.

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the Federal Register at 79 FR 9430 on February 18, 2014, to amend its FOIA regulations. The rule updated and streamlined several procedural provisions and to incorporate certain changes brought resulting from amendments to the FOIA under the

Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007, to reflect developments in case law, and to include current cost figures to be used in calculating and charging fees.

II. Discussion and Analysis

NASA received comments from two members of the public as well as comments from a subcomponent of a Federal agency. NASA has also made minor corrections to the text. The following is a discussion of Comments:

Comment 1: One commenter suggested that in § 1206.201, NASA establish categories of records to proactively disclose and post on its Web site.

Response: The FOIA requires Agencies to proactively post agency records (Subsection (a)(2) of the FOIA) when they have received two requests for the documents and anticipate a third. NASA has regularly taken affirmative steps to make information available to the public through the use of robust Web sites. NASA routinely updates these Web sites to provide the public with documents as well as information, video links, etc. that are of value and interest to the public. NASA declines to adopt this comment.

Comment 2: One commenter suggested that in § 1206.300(g) NASA include an alternative for third party requesters access to Privacy Act records if they are able to demonstrate an overriding public interest in the records.

Response: NASA believes adding a statement of this kind would create confusion with regard to releasing Privacy Act records. There are significant variables concerning release of privacy-protected information, which is addressed on a case-by-case basis. An overriding public interest with regard to the release of privacy-protected information cannot be defined for the purposes of this section. NASA declines to adopt this comment.

Comment 3: One commenter suggested that in § 1206.300(g) NASA include a definition of a FOIA Public Liaison.

Response: NASA has adopted this comment and included this reference in § 1206.801(c).

Comment 4: One commenter suggested that in § 1206.301(a) the word ‘must’ be changed to ‘should’ in the reference requiring requesters to either address their request to an appropriate FOIA Office or identify their letter as a request for an Agency record under the FOIA.

Response: If a requester submits a request to a program office not designated to process FOIA requests and it is not identified as a FOIA request, it may not be appropriately handled. Therefore, a request not sent to a FOIA office must be identified as a request ‘Under the Freedom of Information Act’ in order for staff to understand that it needs to be forwarded to the FOIA office for proper processing. NASA declines to adopt this comment.

Comment 5: One commenter suggested that in § 1206.301(e) that the language indicating NASA need not comply with a blanket or categorical request where it is not reasonably feasible to determine what record is sought be changed to indicate NASA will work with the requester and locate the records sought.

Response: This comment is already reflected in section § 1206.301(f) of this subsection. NASA declines to adopt this comment.

Comment 6: One commenter made a statement in reference to § 1206.301(g) noting from Schladetsch v. HUD (D.D.C. Apr. 4, 2000) that extracting, sorting, and compiling discrete pieces of information from an existing database does not amount to the creation of a new record.

Response: The FOIA does not obligate agencies to create records, it obligates them to provide access to those which it has created or retained. FOIA staff will generally provide

information from an existing database, removing exempt information as necessary unless the information as a whole is exempt from release.

Comment 7: One commenter suggested that in § 1206.302(a) NASA clearly address the statutory fee entitlements for the various processing categories.

Response: NASA has adopted this comment by adding a cross-reference in § 1206.302(a) to Subpart E, § 1206.507(b) and (c), Categories of requesters.

Comment 8: One commenter suggested that in § 1206.302(b)(1) and (h) NASA provide requesters with a breakdown of the fee estimate and/or bill as a best practice.

Response: NASA works with requesters regarding fee estimates, applicable charges, etc. NASA will continue to work with and provide requesters a breakdown of the cost estimate as a best practice but declines to adopt this comment in the regulation.

Comment 9: One commenter suggested that in § 1206.307(b)(2) when denying records, NASA provide a brief description of the exemption as well as a description of the information NASA is withholding.

Response: NASA currently provides a brief description of the exemptions, as required. On a case-by-case basis, NASA does provide descriptive information. However, NASA believes a requirement to provide this information for every case would have a negative impact on NASA's processing and response times while providing the requester with very little, if any, additional meaningful information. NASA declines to adopt this comment.

Comment 10: One commenter suggested that in § 1206.308 when referring records to another agency, NASA provide the name of the contact information.

Response: NASA declines to adopt this comments as it is addressed in § 1206.308(e). However, this particular section has been reworded for clarity purposes.

Comment 11: One commenter suggested that the language in § 1206.400 regarding the subrequirement for expedited processing requiring that a requester ‘must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his/her sole occupation’ would create an additional obligation and an impediment to expedited processing criteria by imposing an added requirement.

Response: After consideration, NASA has removed this subrequirement.

Comment 12: One commenter suggested that in § 1206.401 NASA clarify the language and change the word ‘made’ to ‘submitted’ to ensure requesters do not think they can make a request verbally.

Response: NASA has adopted this comment.

Comment 13: One commenter suggested that NASA should not increase the fees for copy in § 1206.501(f) stating the costs associated with photo-duplication have declined rather than increased over the last 16 years.

Response: Based on inflation, the increase is reasonable and consistent with fees charged by other Federal agencies. This is the first increase in fees NASA has issued in 16 years. NASA declines to adopt this comment.

Comment 14: One commenter suggested that in § 1206.503(c), NASA should increase the minimum threshold to \$50.00 for charging fees to FOIA requesters.

Response: NASA has adopted this comment and will increase the minimum threshold accordingly.

Comment 15: One commenter suggested that in § 1206.504, NASA should provide a breakdown of the fees for search, review and/or duplication.

Response: NASA works with requesters regarding fee estimates, applicable charges, etc. NASA will continue to work with and provide requesters with a breakdown of the cost estimate as a best practice but declines to adopt this comment in the regulation.

Comment 16: One commenter suggested that in § 1206.506(a) the difference between a fee waiver and fee category should be clarified.

Response: To alleviate confusion, NASA has adopted this comment by cross-referencing § 1206.506(a) with § 1206.507 fee categories.

Comment 17: One commenter suggested that in § 1206.506(d)(3) the language in the last sentence be rewritten to conform with the FOIA language ‘using editorial skills to turn raw materials into a distinct work.’

Response: NASA has adopted this comment.

Comment 18: One commenter suggested that in § 1206.506(j) the language should be revised to allow FOIA staff to provide assistance to a requester when composing a request in order to receive a fee waiver.

Response: NASA disagrees with this suggestion. It would place an undue burden on the FOIA staff if they were to provide assistance in composing a request in order for requesters to receive a fee waiver. This would also place them in a position that would prevent them from making an unbiased determination regarding a fee waiver request. NASA declines to adopt this comment.

Comment 19: One commenter suggested that NASA also include the information in § 1206.507(a) in § 1206.300.

Response: NASA declines to adopt this comment as this information is already in § 1206.300(a). NASA need not act on this comment.

Comment 20: One commenter suggested that in § 1206.700(a), NASA increase the minimum time for requesters to prepare and submit appeals from 30 days from the date of the initial determination to 60 days.

Response: NASA has carefully considered this comment but declines to adopt it. The current 30 days from the date of the initial determination allows requesters to consider the response they have received and determine whether or not the response is satisfactory in a timely manner.

Comment 21: One commenter suggested that in § 1206.700(b)(3), NASA change the language requiring requesters to clearly identify a FOIA appeal on the outside envelope of their appeal.

Response: While this is not a requirement of the FOIA, it has been a long-standing requirement for processing appeals and is in the best interest of both the appellant as well as the Agency. Agencies have a limited time to process an appeal in a timely manner; therefore, clearly identifying a FOIA appeal on the outside of the envelope in order to ensure it reaches the proper office in a timely manner is administratively beneficial to both parties. NASA declines to adopt this comment.

Comment 22: One commenter suggested in § 1206.701, NASA include a reference for requesters to contact the Office of Government Information Services (OGIS) to resolve a dispute between requesters and the Agency.

Response: NASA has adopted this comment and included language to reference OGIS in § 1206.701(f)(4) .

Comment 23: One commenter suggested that in Appendix A, NASA also provide fax numbers and email addresses to which requesters can submit requests.

Response: NASA has adopted this comment and will include this information in Appendix A.

Comment 24: The OGIS also suggested NASA include information about the preservation of records and records management in the FOIA regulations.

Response: While this is very good information, NASA has a records management office that is responsible for issuing records management information and requirements in accordance with the General Records Schedule of the National Archives and Records Administration (NARA). NASA declines to adopt this comment.

III. Regulatory Analysis

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This final rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Fees assessed by the Administration are nominal. Further, the “small

entities’’ that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Paperwork Reduction Act Statement

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. § 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 14 CFR Part 1206

Administrative practice and procedure, Freedom of Information Act, Privacy Act.

Accordingly, 14 CFR part 1206 is revised to read as follows:

PART 1206— Procedures for Disclosure of Records Under the Freedom of Information Act (FOIA)

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Subpart A — Basic Policy

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1206.507 Categories of requesters.

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Subpart F — Commercial Information

1206.600 General policy.

1206.601 Notice to submitters.

1206.602 Opportunity to object to disclosure.

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Subpart G — Appeals

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Subpart H — Responsibilities

- 1206.800 Delegation of authority.
- 1206.801 Chief FOIA Officer.
- 1206.802 General Counsel.
- 1206.803 NASA Headquarters.
- 1206.804 NASA Centers and Components.
- 1206.805 Inspector General.

Subpart I — Location for Inspection and Request of Agency Records

- 1206.900 FOIA offices and electronic libraries.

Authority: 5 U.S.C. 552, 552a; 51 U.S.C. 20113(a)

Subpart A - Basic Policy

§ 1206.100 Scope of part.

This part 1206 establishes the policies, responsibilities, and procedures for the release of Agency records which are under the jurisdiction of the National Aeronautics and Space Administration, hereinafter NASA, to members of the public. This part applies to information and Agency records located at NASA Headquarters, and NASA Centers, including Component Facilities and Technical and Service Support Centers, herein NASA Headquarters and Centers, as defined in this part.

§ 1206.101 General policy.

- (a) In compliance with the Freedom of Information Act (FOIA), as amended 5 U.S.C. 552, a positive and continuing obligation exists for NASA, herein Agency, to make available to the fullest extent practicable upon request by members of the public, all Agency records under its jurisdiction, as described in this regulation.

- (b) Part 1206 does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

Subpart B – Types of Records to be Made Available

§ 1206.200 Publishing of records.

- (a) Records required to be published in the Federal Register. The following records are required to be published in the Federal Register, for codification in Title 14, Chapter V, of the CFR.
- (1) Description of NASA Headquarters and NASA Centers and the established places at which, the employees from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;
 - (2) Statements of the general course and method by which NASA's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
 - (3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions regarding the scope and contents of all papers, reports, or examinations;
 - (4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by NASA;
 - (5) Each amendment, revision, or repeal of the foregoing.

(b) Agency opinions, orders, statements, and manuals. (1) Unless they are exempt from disclosure in accordance with the FOIA, or unless they are promptly published and copies offered for sale, NASA shall make available the following records for public inspection and copying or purchase:

- (i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases;
- (ii) Those statements of NASA policy and interpretations which have been adopted by NASA and are not published in the Federal Register;
- (iii) Administrative staff manuals (or similar issuances) and instructions to staff that affect a member of the public;
- (iv) Copies of all records, regardless of form or format, that have been released to any person under Subpart C herein and which, because of the nature of their subject matter, the Agency determines have become or are likely to become the subject of subsequent requests for substantially the same records (frequently requested documents).

(2) A general index of records referred to under paragraph (b)(1)(iv) of this section.

- (i) For records created after November 1, 1997, which are covered by paragraph (b)(1)(i) through (b)(1)(iv) of this section, such records shall be available electronically, through an electronic library and in electronic forms or formats.

(ii) In connection with all records required to be made available or published under this paragraph (b), identifying details shall be deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. However, in each case, the justification for the deletion shall be explained fully in writing. The extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by an exemption in the FOIA. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion is made.

(c) Other Agency records. (1) In addition to the records made available or published under paragraphs (a) and (b) of this section, NASA shall, upon request for other records made in accordance with this part, make such records promptly available to any person, unless they are exempt from disclosure, or unless they may be purchased by the public from other readily available sources, i.e., books.

(2) Furthermore, at a minimum, NASA will maintain records in its electronic library that were created after November 1, 1997, under paragraphs (b)(1)(iv) and a guide for requesting records or information from NASA.

§ 1206.201 Proactive disclosure of Agency records.

Records that are required by the FOIA to be made available for public inspection and copying are accessible on the Agency's Web site, <http://www.nasa.gov>. Each Center is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure,

and for posting such records. Each Center has a FOIA Public Liaison who can assist individuals in locating records particular to a Center. A list of the Agency's FOIA Public Liaisons is available at <http://www.hq.nasa.gov/office/pao/FOIA/agency/>.

§ 1206.202 Records that have been published.

Publication in the Federal Register is a means of making certain Agency records are available to the public in accordance with 5 U.S.C.552(a)(2) without requiring the filing of a FOIA request. NASA has a FOIA Electronic Library Web site at NASA Headquarters and each of its Centers. The FedBizOpps (FBO) (formerly Commerce Business Daily), is also a source of information concerning Agency records or actions. Various other NASA publications and documents, and indexes thereto, are available from other sources, such as the U.S. Superintendent of Documents and the Earth Resources Observation and Science Center (Department of the Interior). Such publications and documents are not required to be made available or reproduced in response to a request unless they cannot be purchased readily from available sources.

§ 1206.203 Incorporation by reference.

Records reasonably available to the members of the public affected thereby shall be deemed published in the Federal Register when incorporated by reference in material published in the Federal Register (pursuant to the Federal Register regulation on incorporation by reference, 1 CFR Part 51).

Subpart C - Procedures

§ 1206.300 How to make a request for Agency records.

- (a) A requester submitting a request for records must include his/her name and mailing address, a description of the record(s) sought (see § 1206.301), and must address fees or provide justification for a fee waiver (see § 1206.302) as well as address the fee category

in accordance with § 1206.507. It is also helpful to provide a telephone number and email address in case the FOIA office needs to contact you regarding your request; however, this information is optional when submitting a written request. If a requester chooses to submit a request online via the NASA FOIA Web site, the required information must be completed. Do not include a social security number on any correspondence with the FOIA office.

- (b) NASA does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, Agency records are decentralized and maintained by various Centers and offices throughout the country.
- (c) NASA has not yet implemented a records management application for automated capture and control of e-records; therefore, official files are primarily paper files.
- (d) A member of the public may request an Agency record by mail, facsimile (FAX), electronic-mail (email), or by submitting a written request in person to the FOIA office having responsibility over the record requested or to the NASA Headquarters (HQ) FOIA Office.
- (e) When a requester is unable to determine the proper NASA FOIA Office to direct a request to, the requester may send the request to the NASA HQ FOIA Office, 300 E. Street SW, Washington, DC 20546–0001. The HQ FOIA Office will forward the request to the Center(s) that it determines to be most likely to maintain the records that are sought.
 - (1) It is in the interest of the requester to send the request to the Center FOIA Office they believe has responsibility over the records being sought. (See Appendix A for www.nasa.gov/foia for NASA FOIA Office locations and addresses.)

- (2) A misdirected request may take up to ten (10) additional working (meaning all days except Saturdays, Sundays and all Federal legal holidays) days to reroute to the proper FOIA office.
- (f) A requester who is making a request for records about himself or herself (a Privacy Act request) must comply with the verification of identity provisions set forth in 14 CFR 1212.202.
- (g) Where a request pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by the individual who is the subject of the record requested, or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746, authorizing disclosure of the records to the requester, or submit proof that the individual is deceased (e.g., a copy of a death certificate or a verifiable obituary).
- (h) As an exercise of its administrative discretion, each Center FOIA office may require a requester to supply additional information if necessary, i.e., a notarized statement from the subject of the file, in order to verify that a particular individual has consented to a third party disclosure. Information will only be released on a case-by-case basis to third party requesters if they have independently provided authorization from the individual who is the subject of the request.

§ 1206.301 Describing records sought.

In view of the time limits under 5 U.S.C. 552(a)(6) for an initial determination on a request for an Agency record, a request must meet the following requirements:

- (a) The request must be addressed to an appropriate FOIA office or otherwise be clearly identified in the letter as a request for an Agency record under the "Freedom of Information Act."
- (b) Requesters must describe the records sought in sufficient detail to enable Agency personnel who are familiar with the subject area of the request to identify and locate the record with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist a FOIA office in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records sought.
- (c) If the requester fails to reasonably describe the records sought, the FOIA office shall inform the requester of what additional information is needed or why the request is deficient. The FOIA office will also notify the requester that it will not be able to comply with the FOIA request unless the additional information requested is provided within 20 working days from the date of the letter. If the additional information is not provided within that timeframe, the request will be closed without further notification.
- (d) If after being asked to clarify a request, the requester provides additional information to the FOIA office but fails to provide sufficient details or information to allow the FOIA office to ascertain exactly what records are being requested and locate them, or in general to process the request, the FOIA office will notify the requester that the request has not been properly made and the request will be closed. The FOIA office will advise him/her that they may submit a new request for the information; however, the requester will need to provide more detailed information to allow processing of the request.

- (e) NASA need not comply with a blanket or categorical request (such as “all matters relating to” a general subject) where it is not reasonably feasible to determine what record is sought.
- (f) NASA will in good faith attempt to identify and locate the record(s) sought and will consult with the requester when necessary and appropriate for that purpose in accordance with these regulations.
- (g) NASA is not required to create or compile records in response to a FOIA request.

§ 1206.302 Fee agreements.

- (a) A request must explicitly state a willingness to pay all fees associated with processing the request, fees up to a specified amount, or a request for a fee waiver, if processing fees will likely exceed the statutory entitlements as defined in §1206.507(b) and (c).
- (b) If the FOIA office determines that fees for processing the request will exceed the agreed upon amount or the statutory entitlements, the FOIA office will notify the requester that:
 - (1) He/she must provide assurance of payment for all anticipated fees or provide an advance payment if estimated fees are expected to exceed \$250.00, or
 - (2) The FOIA office will not be able to fully comply with the FOIA request unless an assurance or advance payment as requested has been provided.
 - (3) He/she may wish to limit the scope of the request to reduce the processing fees.
- (c) If the FOIA office does not receive a written response within 20 working days after requesting the information, it will presume the requester is no longer interested in the records requested and will close the file on the request without further notification.
- (d) A commercial-use requester (as defined in § 1206.507(c)(1)) must:
 - (1) State a willingness to pay all fees associated with processing a request; or

- (2) State a willingness to pay fees to cover the costs of conducting an initial search for responsive records to determine a fee estimate.
- (e) If a requester is only willing to pay a limited amount for processing a request and it is for more than one document, the requester must state the order in which he/she would like the request for records to be processed.
- (f) If a requester is seeking a fee waiver, the request must include sufficient justification to substantiate a waiver. (See subpart E of this part for information on fee waivers.) Failure to provide sufficient justification will result in a denial of the fee waiver request.
- (g) If a requester is seeking a fee waiver, he/she may also choose to state a willingness to pay fees in case the fee waiver request is denied in order to allow the FOIA office to begin processing the request while considering the fee waiver.
- (h) If a fee is chargeable for search, review, duplication, or other costs incurred in connection with a request for an Agency record, the requester will be billed prior to releasing Agency documents. If the total amount of processing fees is under \$50.00, the Agency will release the records when final processing is complete.
- (1) If the exact amount of the fee chargeable is not known at the time of the request, the requester will be notified in the initial determination (or in a final determination in the case of an appeal) of the amount of fees chargeable.
- (2) For circumstances in which advance payment of fees is required, the requester will be notified after the FOIA office has obtained an estimate of associated fees.
- (i) The FOIA office will begin processing a request only after the request has been properly described in accordance with these regulations and fees have been resolved.

- (j) If the requester is required to pay a fee and it is later determined on appeal that he/she was entitled to a full or partial fee waiver, a refund will be sent as appropriate.
- (k) NASA may refuse to consider a waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain owed to the Agency for another information access request.

§ 1206.303 Format of records disclosed.

- (a) The FOIA office will provide the records in the requested format if the records can readily be reproduced from the original file to that specific format.
- (b) The FOIA office may charge direct costs associated with converting the records or files into the requested format if they are not maintained in that format. If the costs to convert the records exceed the amount the requester has agreed to pay, the FOIA office will notify the requester in writing. If the requester does not agree to pay the additional fees for converting the records, the records may not be provided in the requested format.

§ 1206.304 Expedited processing.

A requester may ask for expedited processing of a request. However, information to substantiate the request must be included in accordance with §1206.400, Criteria for Expedited Processing; otherwise, the request for expedited processing will be denied and processed in the simple or complex queue.

§ 1206.305 Responding to requests.

- (a) Except in the instances described in paragraphs (e) and (f) of this section, the FOIA office that first receives a request for a record and maintains that record is the FOIA office responsible for responding to the request.

- (b) In determining what records are responsive to a request, a FOIA office ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the FOIA office shall inform the requester of that date.
- (c) A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c)(1)-(3), shall not be considered responsive to a request.
- (d) The Head of a Center, or designee, is authorized to grant or to deny any requests for records that are maintained by that Center.
- (e) The FOIA office may refer a request to or consult with another Center FOIA office or Federal agency in accordance with § 1206.308, if the FOIA office receives a request for records that are in its possession that were not created at that Center. If another Center within NASA or another Federal agency has substantial interest in or created the records, the request will either be referred or they will consult with that FOIA office/agency.
- (f) If a request for an Agency record is received by a FOIA office not having responsibility of the record (for example, when a request is submitted to one NASA Center or Headquarters and another NASA Center has responsibility of the record), the FOIA office receiving the request shall promptly forward it to that FOIA office within 10 working days from the date of receipt. The receiving FOIA office shall acknowledge the request and provide the requester with a tracking number.

§ 1206.306 Granting a request.

- (a) The FOIA office will not begin processing a request until all issues regarding scope and fees have been resolved.

- (b) If fees are not expected to exceed the minimum threshold of \$50.00, and the scope of the request is in accordance with § 1206.301, the FOIA office will begin processing the request.
- (c) If the FOIA office contacts the requester regarding fees or clarification and the requester has provided a response, the FOIA office will notify the requester in writing of the decision to either grant or deny the request.

§ 1206.307 Denying a request.

- (a) If the FOIA office denies records in response to a request either in full or in part, it will advise the requester in writing that:
 - (1) The requested record(s) is exempt in full or in part; or
 - (2) Records do not exist, cannot be located, or are not in the Agency's possession; or
 - (3) A record is not readily reproducible in the form or format requested; or
 - (4) Denial is based on a procedural issue only and not access to the underlying records when it makes a decision that:
 - (i) A fee waiver or another fee-related issue will not be granted; or
 - (ii) Expedited processing will not be provided.
- (b) The denial notification must include:
 - (1) The name, title, or position of the person(s) responsible for the denial;
 - (2) A brief statement of the reasons for the denial, including a reference to any FOIA exemption(s) applied by the FOIA office to withhold records in full or in part;
 - (3) An estimate of the volume of any records or information withheld, i.e., the number of pages or a reasonable form of estimation, unless such an estimate would harm an interest protected by the exemption(s) used to withhold the records or information;

(4) A statement that the denial may be appealed under Subpart G of this part and a description of the requirements set forth therein.

(c) If the requested records contain both exempt and non-exempt material, the FOIA office will:

(1) Segregate and release the non-exempt material unless the non-exempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(2) Indicate on the released portion(s) of the records the amount of information redacted and the FOIA exemption(s) under which the redaction was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(3) If technically feasible, place the exemption at the place of excision.

§ 1206.308 Referrals and consultations within NASA or other Federal Agencies.

(a) Referrals and consultations can occur within the Agency or outside the Agency.

(b) If a FOIA office (other than the Office of Inspector General) receives a request for records in its possession that another NASA FOIA office has responsibility over or is substantially concerned with, it will either:

(1) Consult with the other FOIA office before deciding whether to release or withhold the records; or

(2) Refer the request, along with the records, to that FOIA office for direct response.

(c) If the FOIA office that originally received the request refers all or part of the request to another FOIA office within the Agency for further processing, they will notify the requester of the partial referral and provide that FOIA contact information.

- (d) If while responding to a request, the FOIA office locates records that originated with another Federal agency, it will generally refer the request and any responsive records to that other agency for a release determination and direct response.
- (e) If the FOIA office refers all the records to another agency, it will document the referral and maintain a copy of the records that it refers; notify the requester of the referral in writing, unless that identification will itself disclose a sensitive, exempt fact; and will provide the contact information for the other agency and if known, the name of a contact at the other agency.
- (f) If the FOIA office locates records that originated with another Federal agency while responding to a request, the office will make the release determination itself (after consulting with the originating agency) when:
- (1) The record is of primary interest to NASA (for example, a record may be of primary interest to NASA if it was developed or prepared according to Agency regulations or directives, or in response to an Agency request); or
 - (2) NASA is in a better position than the originating agency to assess whether the record is exempt from disclosure; or
 - (3) The originating agency is not subject to the FOIA; or
 - (4) It is more efficient or practical depending on the circumstances.
- (g) If the FOIA office receives a request for records that another Federal agency has classified under any applicable executive order concerning record classification, it must refer the request to that agency for response.
- (h) If the FOIA office receives a request for records that are under the purview of another Federal agency, the office will return the request to the requester and may advise the

requester to submit it directly to another agency. The FOIA office will then close the request.

- (i) All consultations and referrals received by the Agency will be handled according to the date that the FOIA request initially was received by the first FOIA office.

Subpart D - Procedures and Time Limits for Responding to Requests

§ 1206.400 Procedures for processing queues and expedited processing.

- (a) The FOIA office will normally process requests in the order in which they are received in each of the processing tracks.
- (b) FOIA offices use three queues for multi-track processing depending on the complexity of the request. Once it has been determined the request meets the criteria in accordance with subpart C of this part, the FOIA office will place the request in one of the following tracks:
 - (1) Simple – A request that can be processed within 20 working days.
 - (2) Complex – A request that will take over 20 working days to process. (A complex request will generally require coordination with more than one office and a legal 10 working day extension for unusual circumstances (see § 1206.403) may be taken either up front or during the first 20 days of processing the request.)
 - (3) Expedited processing – A request for expedited processing will be processed in this track if the requester can show exceptional need or urgency that their request should be processed out of turn in accordance with paragraph (c) of this section.
- (c) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve one or more of the following:

- (1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
 - (2) Circumstances in which there is an urgency to inform the public about an actual or alleged Federal Government activity if the FOIA request is made by a person primarily engaged in disseminating information;
 - (i) In most situations, a person primarily engaged in disseminating information will be a representative of the news media and therefore, will qualify as a person primarily engaged in disseminating information.
 - (ii) To substantiate paragraph (c)(2) of this section, the requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news; or
 - (3) The loss of substantial due process rights.
- (d) A request for expedited processing must contain a statement that:
- (1) Explains in detail how the request meets one or more of the criteria in paragraph (c) of this section; and
 - (2) Certifies that the explanation is true and correct to the best of the requester's knowledge and belief.
 - (3) If the request is made referencing paragraph (c)(2) of this section, the requester must substantiate the public interest.

- (e) A request for expedited processing may be made at any time. Requests must be submitted to the FOIA office responsible for processing the requested records.
- (f) The FOIA office must notify the requester of its decision to grant or deny expedited processing within 10 calendar days from the date of receipt.
- (g) If expedited processing is granted, the request will be processed on a first-in, first-out basis in that queue.
- (h) If expedited processing is denied, the FOIA office will notify the requester and provide information on appealing this decision in accordance with Subpart G of this part and place the request in the appropriate processing queue.
- (i) If the FOIA office processing the request does not provide notification of either granting or denying the request for expedited processing within 10 calendar days from the date of receipt, the requester may file an appeal for non-response in accordance with subpart G of this part.

§ 1206.401 Procedures and time limits for acknowledgement letters and initial determinations.

- (a) Following receipt of a request submitted under the FOIA, the FOIA staff will send an acknowledgement letter providing the case tracking number and processing track within ten (10) working days from date of receipt to the requester.
- (b) An initial determination is a decision by a NASA official, in response to a request by a member of the public for an Agency record, on whether the record described in the request can be identified and located after a reasonable search and, if so, whether the record (or portions thereof) will be made available under this part or will be withheld from disclosure under the FOIA.

- (c) An initial determination on a request for an Agency record addressed in accordance with this regulation (to include one submitted in person at a FOIA office) shall be made (for example, to grant, partially grant or deny a request), and the requester shall be sent an initial determination letter within 20 working days after receipt of the request, as required by 5 U.S.C. 552(a)(6) (unless unusual circumstances exist as defined in § 1206.403).
- (d) The basic time limit for a misdirected FOIA request (not a referral or consultation) begins on the date on which the request is first received by the appropriate FOIA office within the Agency, but in any event no later than ten (10) working days after the date the request is first received by a FOIA office designated to receive FOIA requests.
- (e) Any notification of an initial determination that does not comply fully with the request for an Agency record, including those searches that produce no responsive documents, shall include a statement of the reasons for the adverse determination, include the name and title of the person making the initial determination, and notify the requester of the right to appeal to the Administrator or the Inspector General, as appropriate, pursuant to subpart G of this part.

§ 1206.402 Suspending the basic time limit.

- (a) In accordance with 5 U.S.C. 552(a)(6)(A)(ii)(I), the FOIA office may make one request to the requester for information to clarify a request and temporarily suspend (toll) the time (the 20-day period) while it is awaiting such information that it has reasonably requested from the requester. Receipt of the requester's response by the FOIA office to the Agency's request for additional information or clarification ends the temporary time suspension.

- (b) In accordance with 5 U.S.C. 552(a)(6)(A)(ii)(II), the FOIA office may temporarily suspend (toll) the 20-day period as many times as is necessary to clarify with the requester issues regarding fees. Receipt of the requester's response by the FOIA office to the Agency's request for information regarding fees ends the temporary time suspension.

§ 1206.403 Time extensions.

- (a) In "unusual circumstances" as defined in this section, the time limits for an initial determination and for a final determination may be extended, but not to exceed a total of 10 working days in the aggregate in the processing of any specific request for an Agency record. The extension must be taken before the expiration of the 20 working day time limits. The requester will be notified in writing of:
- (1) The unusual circumstances surrounding the extension of the time limit;
 - (2) The date by which the FOIA office expects to complete the processing of the request.
- (b) Unusual circumstances are defined as:
- (1) The need to search for and collect the requested records from offices other than the office processing the request;
 - (2) The need to search for, collect, and appropriately examine a voluminous number of documents;
 - (3) The need to coordinate and/or consult with another NASA office or agency having a substantial subject-matter interest in the determination of the request.
- (c) If initial processing time will exceed or is expected to exceed 30 working days, the FOIA office will notify the requester of the delay in processing and:
- (1) Provide an opportunity to modify or limit the scope of the request to reduce processing time; and

(2) Provide appeal rights, since the FOIA office has exceeded the 30 working day time period.

(3) Shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.

(d) The requester's refusal to reasonably modify the scope of a request or arrange an alternative timeframe for processing a request after being given the opportunity to do so may be considered a factor when determining whether exceptional circumstances exist. A delay that results from a predictable workload of requests does not constitute exceptional circumstances unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests.

Subpart E – Fees Associated With Processing Requests

§ 1206.500 Search.

(a) Search includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. A search will determine what specific documents, if any, are responsive to a request. A search for Agency records responsive to a request may be accomplished by manual or automated means.

(b) Search charges, as set forth in this part, may be billed even when an Agency record, which has been requested, cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request has been conducted or if located, cannot be made available under § 1206.308.

(c) In responding to FOIA requests, FOIA offices shall charge the following fees based on the date the request is received in the NASA FOIA Office unless a waiver or reduction of fees

has been granted under § 1206.506. Fees will be determined on October 1st of each year based on the appropriate General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits of employees. Fees such as search, review, and duplication will be charged in accordance with the requester's fee category as defined in § 1206.507.

(d) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly GS-base salary, plus the District of Columbia locality payment, plus 16 percent for benefits of employees in the following three categories, as applicable:

(1) Clerical – Based on a GS-6, Step 5 (all employees at a GS-7 and below are classified as clerical for this purpose).

(2) Professional – Based on a GS-11, Step 7 pay (all employees at a GS-8 through GS-12 are classified as professional for this purpose);

(3) Managerial – Based on GS-14, Step 2, pay (all employees at a GS-13 and above are classified as managerial for this purpose).

(e) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(f) For requests that require the retrieval of records stored by an agency at a Federal records center operated by the NARA, additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

§ 1206.501 Review.

(a) Review means the process of examining a document(s) located in response to a request to determine whether the document(s) or any portion thereof is disclosable. Review does

not include time spent resolving general legal or policy issues regarding the application of exemptions.

- (b) Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by Agency staff to determine whether an exemption applies to a particular record or portion of a record.
- (c) Review fees will be charged to commercial use requesters.
- (d) No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with an additional review of the records in order to consider the use of other exemptions may be assessed as review fees.
- (e) Review fees will be charged at the same rates as those charged for a search under § 1206.500.
- (f) Review fees can be charged even if the record(s) reviewed ultimately is not disclosed.
- (g) Review fees will not include costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section.

§ 1206.502 Duplication.

- (a) Duplication is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.
- (b) FOIA offices shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the FOIA office in the form or format requested. If the records are not readily reproducible in the requested form or format, the

Agency will so inform the requester. The requester may specify an alternative form or format that is available. If in this situation the requester refuses to specify an alternative form or format, the Agency will not process the request any further.

- (c) Where standard-sized photocopies or scans are supplied, the FOIA office will provide one copy per request at the regular copy rate per page.
- (d) For copies of records produced on tapes, disks, or other electronic media, FOIA offices will charge the direct costs of producing the copy, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under this subpart.
- (e) If NASA staff must scan paper documents in order to accommodate a requester's preference to receive the records in an electronic format, the requester shall pay the appropriate copy fee charge per page as well as each quarter hour spent by personnel scanning the requested records. Fees will be the same as those charged for search under this subpart for each quarter hour spent by personnel scanning the requested records.
- (f) For other forms of duplication, FOIA offices will charge the direct costs as well as any associated personnel costs. For standard-sized copies of documents such as letters, memoranda, statements, reports, contracts, etc., \$0.15 per copy of each page; charges for double-sided copies will be \$0.30. For copies of oversized documents, such as maps, charts, etc., fees will be assessed as direct costs. Charges for copies (and scanning) include the time spent in duplicating the documents. For copies of computer disks, still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards,

etc., the fee charged will reflect the direct cost to NASA of reproducing, copying, or scanning the record.

- (g) If the request for an Agency record required to be made available under this part requires a computerized search or printout, the charge for the time of personnel involved shall be at the rates specified in this part or the direct costs assessed to the Agency. The charge for computer time involved and for any special supplies or materials used shall not exceed the direct cost to NASA.
- (h) Reasonable standard fees may be charged for additional direct costs incurred in searching for or duplicating an Agency record in response to a request under this part. Charges made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.
- (i) Complying with requests for special services such as those listed in this section is entirely at the discretion of NASA. To the extent that NASA elects to provide the following services, it will levy a charge equivalent to the full cost of the service provided:
 - (1) Certifying that records are true copies.
 - (2) Sending records by special methods such as express mail.
 - (3) Packaging and mailing bulky records that will not fit into the largest envelope carried in the supply inventory.

§ 1206.503 Restrictions on charging fees.

- (a) No search fees will be charged when the FOIA office fails to comply with the statutory time limits in response to a request if no unusual or exceptional circumstances apply to the processing of the request, as those terms are defined in Subpart D of this regulation.

- (b) In the case of a requester as defined in § 1206.507(c)(2) (education and noncommercial scientific institution) and (c)(3) (representative of the news media), no duplication fees will be charged when the FOIA office fails to comply with the statutory time limits in response to a request if no unusual or exceptional circumstances apply to the processing of the request, as those terms are defined in subpart D of this part.
- (c) Fees will not be charged unless they are over \$50.00.
- (d) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required to fulfill processing of the request.

§ 1206.504 Charging fees.

- (a) When a FOIA office determines or estimates the fees to be assessed in accordance with this section will exceed \$50.00, the FOIA office shall notify the requester unless the requester has indicated a willingness to pay fees as high as those anticipated. If a portion of the fees can be readily estimated, the FOIA office shall advise the requester accordingly.
- (b) In cases in which a requester has been notified that actual or estimated fees are in excess of \$50.00, the request shall be placed on hold and further work will not be completed until the requester commits in writing to pay the actual or estimated fees. Such a commitment must be made by the requester in writing, must indicate a given dollar amount or a willingness to pay all processing fees, and must be received by the FOIA office within 20 working days from the date of the letter providing notification of the fee estimate. If a commitment is not received within this period, the request shall be closed without further notification.

- (c) After the FOIA office begins processing a request, if it finds that the actual cost will exceed the amount the requester previously agreed to pay, the FOIA office will: stop processing the request; and promptly notify the requester of the higher amount. The request will be placed on hold until the fee issue has been resolved. If the issue is not resolved within 20 working days from the date of the notification letter, the request shall be closed without further notification.
- (d) Direct costs, meaning those expenditures that NASA actually incurs in searching for, duplicating, and downloading computer files and documents in response to a FOIA request, will be included on the invoice as appropriate. Direct costs include, for example, the salary of the employee who would ordinarily perform the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), the cost of operating computers and other electronic equipment, such as photocopiers and scanners, the costs associated with retrieving records stored at a Federal records center operated by the NARA, as well as costs for CDs and other media tools.
- (e) NASA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the FOIA office. NASA will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.
- (f) If processing fees are less than \$50.00, NASA will send all releaseable documents (or portions thereof) following the completion of the initial determination. If fees are greater

than \$50.00, the documents will not be released until the invoice has been paid and verified by the FOIA office.

- (g) Final billing will be sent when the initial determination has been completed. At that time the case will be closed.

§ 1206.505 Advance payments.

- (a) For requests other than those described in paragraphs (b), (c), and (f) of this section, a FOIA office shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment for search, review and/or before records are released to a requester) is not an advance payment.
- (b) When a FOIA office determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A FOIA office may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester.
- (c) Where a requester has previously failed to pay a properly charged FOIA fee assessed by any FOIA office in the agency within 30 calendar days of the billing date, a FOIA office may require the requester to pay the full amount due, plus any applicable interest due on the outstanding debt, before the FOIA office begins to process a new request or continues to process a pending request or any pending remand of an appeal. Once the outstanding bill has been paid, the FOIA office may also require the requester to make an advance payment of the full amount of any anticipated fee before processing the new request.

- (d) Where a FOIA office has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide further proof of identity.
- (e) In cases in which a FOIA office requires advance payment, the request shall be placed on hold and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 20 working days after the date of the FOIA office's letter, the request will be closed without further notification.
- (f) When advance payment is required in order to initiate processing, after a fee estimate has been determined, the FOIA office will require payment before continuing to process the request.
- (g) The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the FOIA office will inform the requester of the contact information for that source.

§ 1206.506 Requirements for a waiver or reduction of fees.

- (a) The burden is on the requester to justify an entitlement to a fee waiver. (See § 1206.507 for a discussion on fee categories.)
- (b) Requests for a waiver or reduction of fees shall be considered on a case-by-case basis using the criteria in this section. These statutory requirements must be satisfied by the requester before properly assessable fees are waived or reduced under the statutory standard.

(c) Records shall be furnished without charge or at a reduced rate if the requester has demonstrated, based on all available information, that disclosure of the information is in the public interest because it:

- (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and
- (2) Is not primarily in the commercial interest of the requester.

(d) In deciding whether a request for a fee waiver meets the requirements in § 1206.506(c)(1), the FOIA office will use the following factors, which must be addressed by the requester:

- (1) Does the subject of the request specifically concern identifiable operations or activities of the Agency with a connection that is direct and clear, not remote or attenuated? For example, is the information requested clearly associated to current events?
- (2) If the record(s) concern the operations or activities of the Government, is disclosure likely to contribute to an increased public understanding of those operations or activities? For example, are the disclosable contents of the record(s) meaningfully informative in relation to the subject matter of the request?
- (3) Is the focus of the requester on contributing to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? The requester must demonstrate how he/she plans to disseminate the information. The dissemination of information must be to the general public or a reasonably broad audience. (Dissemination to a wide audience is not merely posting

the documents on a Web site, but using his/her editorial skills to turn raw materials into a distinct work.)

- (4) If there is likely to be a contribution to public understanding, will that contribution be significant? A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Agency operations, including the quality of Agency activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Agency.
- (e) In deciding whether the fee waiver meets the requirements in § 1206.506(c)(2), the FOIA office will consider any commercial interest of the requester that would be furthered by the requested disclosure.
 - (1) Requesters are encouraged to provide explanatory information regarding this consideration.
 - (2) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure.
 - (3) If the requester is a representative of a news media organization seeking information as part of a news gathering process, the FOIA office will presume that the public interest outweighs the requester's commercial interest.
 - (4) If the requester represents a business, corporation, or is an attorney representing such an organization, the FOIA office will presume that the commercial interest outweighs the public interest unless otherwise demonstrated.
- (f) Where only some of the records to be released satisfy the requirements for a waiver of fees, a partial waiver shall be granted for those records.

- (g) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Agency and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal.
- (h) When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received by the office processing the original request.
- (i) When deciding whether to waive or reduce fees, the FOIA office will rely on the fee waiver justification submitted in the request letter. If the request letter does not include sufficient justification, the FOIA office will either deny the fee waiver request or at its discretion, ask for additional justification from the requester.
- (j) FOIA offices may make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request in an effort to reduce fees; however, the FOIA staff may not assist a requester in composing a request, advising what specific records to request, or how to write a request to qualify for a fee waiver.

§ 1206.507 Categories of requesters.

- (a) A request should indicate the fee category. If the requester does not indicate a fee category, or it is unclear to the FOIA office, the FOIA office will make a determination of the fee category based on the request. If the requester does not agree with their determination, he/she will be afforded the opportunity to provide information to support a different fee category.

(b) If the request is submitted on behalf of another person or organization (e.g., if an attorney is submitting a request on behalf of a client), the fee category will be determined by considering the underlying requester's identity and intended use of the information. The following table outlines the basic fee categories and applicable fees:

Requester Category	Search fees	Review fees	Duplication fees
Commercial use requester	Yes	Yes	Yes
Educational and non-commercial scientific institutions	No	No	Yes (first 100 pages, or equivalent volume, without charge)
Representative of news media requester	No	No	Yes (first 100 pages, or equivalent volume, without charge)
All other requesters	Yes (first 2 hours without charge)	No	Yes (first 100 pages, or equivalent volume, without charge)

(c) The FOIA provides for three categories of requesters. However, for clarity purposes, NASA has broken them down to four for the purposes of determining fees. These four categories of FOIA requesters are: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories, which is indicated in the FOIA fee table above.

(1) Commercial use requesters. When NASA receives a request for documents appearing to be for commercial use, meaning a request from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests of either the requester or the person on whose behalf the request is made, it will assess charges to recover the full direct costs of searching for, reviewing for release,

and duplicating the records sought. NASA will not consider a commercial-use request for a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. A request from a corporation (not a news media corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category. Commercial use requesters are not entitled to two (2) hours of search time or to 100 pages of duplication of documents without charge.

- (2) Education and non-commercial scientific institution requesters. (i) To be eligible for inclusion in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use (not operated for commerce, trade or profit), but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. A request for educational purposes must be sent on the Institution's letterhead and signed by the Dean of the School or Department. Records requested for the intention of fulfilling credit requirements are not considered to be sought for a scholarly purpose.
- (ii) For the purposes of a non-commercial scientific institution, it must be solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Requests must be sent on the letterhead of the scientific institution and signed by the responsible official in charge of the project/program associated with the subject of the documents that are being requested.

(3) Representative of the news media. (i) NASA shall provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100

pages when the requester demonstrates the following:

(A) The requester's intended dissemination,

(B) Whether the information is current news and/or of public interest, and

(C) Whether the information sought will shed new light on agency statutory operations.

(ii) A representative of the news media is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, NASA shall also consider a requester's past publication record in making this determination. NASA's decision to grant a requester news media status for the purposes of assessing fees will be made on a case-by-case basis based upon the requesters intended use.

- (iii) Requesters seeking this fee category who do not articulate sufficient information to support their request will not be included in this fee category. Additionally, FOIA staff may grant a partial fee waiver if the requester can articulate the information above for some of the documents.
- (4) All other requesters. NASA shall charge requesters who do not fit into any of the categories mentioned in this section fees in accordance with the fee table above.

§ 1206.508 Aggregation of requests.

- (a) A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees.
- (b) When NASA has reason to believe that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests on a single subject or related subjects for the purpose of avoiding the assessment of fees, NASA will aggregate any such requests and charge accordingly.
- (c) NASA will consider that multiple requests made within a 30-day period were so intended submitted as such to avoid fees, unless there is evidence to the contrary.
- (d) NASA will aggregate requests separated by a longer period of time only when there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.
- (e) NASA will not aggregate multiple requests on unrelated subjects from one requester or organization.

§ 1206.509 Form of payment.

Payment shall be made by check or money order payable to the "Treasury of the United States," or by credit card per instructions in the initial determination or billing invoice and sent to NASA.

§ 1206.510 Nonpayment of fees.

- (a) Requesters are advised that should they fail to pay the fees assessed, they may be charged interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.
- (b) Applicability of Debt Collection Act of 1982 (Pub. L. 97-365). Requesters are advised that if full payment is not received within 60 days after the billing was sent, the procedures of the Debt Collection Act may be invoked (14 CFR 1261.407-1261.409). These procedures include three written demand letters at not more than 30-day intervals, disclosure to a consumer reporting agency, and the use of a collection agency, where appropriate.

§ 1206.511 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

Subpart F - Commercial Information

§ 1206.600 General policy.

- (a) Notice shall be given to a submitter whenever the information requested is commercial information and has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the Act, or the Agency otherwise has reason to believe that the information may be protected from disclosure under Exemption 4. For the purpose of applying the notice requirements, commercial information is information provided by a submitter and in the possession of NASA, that may arguably be exempt from disclosure under the provisions of Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). The meaning ascribed to this term for the purpose of this notice requirement is separate

and should not be confused with use of this or similar terms in determining whether information satisfies one of the elements of Exemption 4.

(b) A submitter is a person or entity outside the Federal Government from whom the Agency directly or indirectly obtains commercial or financial information. The term submitter includes, but is not limited to corporations, state governments, individuals, and foreign governments.

(c) The notice requirements of § 1206.601 will not apply if:

(1) The information has been lawfully published or officially made available to the public; or

(2) Disclosure of the information is required by a statute (other than this part); or

(3) The submitter has received notice of a previous FOIA request which encompassed information requested in the later request, and the Agency intends to withhold and/or release information in the same manner as in the previous FOIA request.

(d) An additional limited exception to the notice requirements of § 1206.601, to be used only when all of the following exceptional circumstances are found to be present, authorizes the Agency to withhold information that is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice when:

(1) The Agency would be required to provide notice to over ten (10) submitters, in which case, notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(2) Absent any response to the published notice, the Agency determines that if it provided notice as is otherwise required by § 1206.601, it is reasonable to assume that

the submitter would object to disclosure of the information based on Exemption 4;
and,

(3) If the submitter expressed the anticipated objections, the Agency would uphold those objections.

(e) The exception shall be used only with the approval of the Chief Counsel of the Center, the Counsel to the Inspector General, or the Associate General Counsel responsible for providing advice on the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

§ 1206.601 Notice to submitters.

(a) Except as provided in § 1206.603(b) and § 1206.603(c), the Agency shall provide a submitter with prompt written notice of a FOIA request that seeks its commercial information whenever required under § 1206.600(a).

(b) A notice to a submitter must include:

- (1) The exact language of the request or an accurate description of the request;
- (2) Access to or a description of the responsive records or portions thereof containing the commercial information to the submitter;
- (3) A description of the procedures for objecting to the release of the possibly confidential information under § 1206.602;
- (4) A time limit for responding to the Agency that shall not exceed 10 working days from the date of the letter sent to the submitter by the FOIA Office or publication of the notice (as set forth in § 1206.603(b)) to object to the release and to explain the basis for the objection;

- (5) Notice that the information contained in the submitter's objections may itself be subject to disclosure under the FOIA;
 - (6) Notice that the Agency, not the submitter, is responsible for deciding whether the information shall be released or withheld;
 - (7) Notice that failing to respond within the timeframe specified under § 1206.601(b)(4) will create a presumption that the submitter has no objection to the disclosure of the information in question.
- (c) Whenever the Agency provides notice pursuant to this section, the Agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

§ 1206.602 Opportunity to object to disclosure.

- (a) If a submitter has any objections to the disclosure of commercial information, the submitter must provide a detailed written statement to the FOIA office that specifies all factual and/or legal grounds for withholding the particular information under any FOIA exemptions.
- (b) The submitter must include a daytime telephone number, an email and mailing address, and a fax number if available on a response to the FOIA office.
- (c) A submitter who does not respond within the time period specified under this subpart will be considered to have no objection to disclosure of the information.
- (d) Responses received by the FOIA office after the time period specified in § 1206.601(b)(4) will not be considered by the FOIA office. An extension of time to respond may be granted provided the submitter provides an explanation justifying additional time within the time period specified in § 1206.601(b)(4).

§ 1206.603 Notice of intent to disclose.

- (a) The Agency shall carefully consider any objections of the submitter in the course of determining whether to disclose commercial information. The Agency, not the submitter, is responsible for deciding whether the information will be released or withheld.
- (b) Whenever the Agency decides to disclose commercial information over the objection of a submitter, the Agency shall forward to the submitter a written statement which shall include the following:
 - (1) A brief explanation as to why the Agency did not agree with any objections;
 - (2) A description of the commercial information to be disclosed, sufficient to identify information to the submitter; and
 - (3) A date after which disclosure is expected, which shall be no less than 10 working days from the date of the letter providing notification to the submitter by the FOIA Office (§ 1206.601).
- (c) The FOIA office will provide notification regarding a FOIA lawsuit:
 - (1) To a submitter, when a requester brings suit seeking to compel disclosure of commercial information; or
 - (2) To a requester, when a submitter brings suit against the Agency in order to prevent disclosure of commercial information.

Subpart G - Appeals

1206.700 How to submit an appeal.

- (a) A member of the public who has requested an Agency record in accordance with subpart C of this part, and who has received an initial determination which does not comply fully with the request, may appeal such an adverse initial determination to the

Administrator, or, for records as specified in § 1206.805, to the Inspector General within 30 days from the date of the initial determination letter.

(b) The appeal must:

- (1) Be in writing;
- (2) Be addressed to the Administrator, NASA Headquarters, Executive Secretariat, Washington, DC 20546, or, for records as specified in § 1206.805, to the Inspector General, NASA Headquarters, Washington, DC 20546;
- (3) Be identified clearly on the envelope and in the letter as an “Appeal under the Freedom of Information Act;”
- (4) Include a copy of the initial request for the Agency record and a copy of the adverse initial determination along with any other correspondence with the FOIA office;
- (5) To the extent possible, state the reasons the adverse initial determination should be reversed; and
- (6) Be sent to the Administrator or the Inspector General, as appropriate, within 30 days of the date of the initial determination.

(c) An official authorized to make a final determination may waive any of the requirements of paragraph (b) of this section, in which case the time limit for the final determination (see § 1206.701(a)) shall run from the date of such waiver.

§ 1206.701 Actions on appeals.

(a) Except as provided in § 1206.403, the Administrator or designee, or in the case of records as specified in § 1206.805, the Inspector General or designee, shall make a final determination on an appeal and notify the appellant thereof, within 20 working days after the receipt of the appeal by the Administrator’s Office.

- (b) In “unusual circumstances” as defined in §1206.403, the time limit for a final determination may be extended, but not to exceed a total of 10 working days in the aggregate in the processing of any specific appeal for an Agency record. The extension must be taken before the expiration of the 20 working day time limit. The appellant will be notified in writing in accordance with §1206.403.
- (c) If processing time will exceed or is expected to exceed 30 working days, the appellant will be notified of the delay in processing and the reason for the delay.
- (d) If the final determination reverses in whole or in part the initial determination, the record requested (or portions thereof) shall be made available promptly to the requester, as provided in the final determination.
- (e) If a reversal in whole or in part of the initial determination requires additional document search or production, associated fees will be applicable in accordance with fee guidance in this regulation.
- (f) If the final determination sustains in whole or in part an adverse initial determination, the notification of the final determination shall:
- (1) Explain the basis on which the record (or portions thereof) will not be made available;
 - (2) Include the name and title of the person making the final determination;
 - (3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552(a)(4);
 - (4) Provide a statement regarding the mediation services of the Office of Government Information Services (OGIS) as a non-exclusive alternative to litigation; and
 - (5) Enclose a copy of 5 U.S.C. 552(a)(4).

(g) Before seeking a review by a court of a FOIA office's adverse initial determination, a requester must generally submit a timely administrative appeal in accordance with this part.

§ 1206.702 Litigation.

In any instance in which a requester brings suit concerning a request for an Agency record under this part, the matter shall promptly be referred to the General Counsel with a report on the details and status of the request.

Subpart H - Responsibilities

§ 1206.800 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this subpart is delegated from the Administrator to the officials named in this subpart.

§ 1206.801 Chief FOIA Officer.

- (a) The Associate Administrator, Office of Communications, is designated as the Chief FOIA Officer for the Agency. The Chief FOIA Officer is delegated authority for administering the FOIA and all related laws and regulations within the Agency. The Associate Administrator has delegated the day-to-day oversight of the Agency FOIA Program to the Deputy Associate Administrator for Communications.
- (b) The Deputy Associate Administrator for Communications has delegated the overall responsibility for developing and administering the FOIA program within NASA to the Principal Agency FOIA Officer, located in the Office of Communications. This includes:
 - (1) Developing regulations, guidelines, procedures, and standards for the Agency's FOIA program;

- (2) Overseeing all FOIA offices and programs and ensuring they are in compliance with FOIA laws and regulations;
 - (3) Ensuring implementation of the FOIA Programs throughout the Agency and keeping the Chief FOIA Officer and the Deputy Associate Administrator for Communications informed of the Agency's FOIA performance;
 - (4) Providing program oversight, technical assistance, and training to employees to ensure compliance with the Act;
 - (5) Preparing the Agency's FOIA Annual Report to the Department of Justice (DOJ) and Congress, as well as the Chief FOIA Officer's Report;
 - (6) Preparing all other reports as required to DOJ/Congress or within the Agency;
 - (7) Developing, conducting, and reviewing all internal Agency FOIA training for NASA FOIA staff;
 - (8) Directly supervising the Headquarters FOIA Office.
- (c) The Chief FOIA Officer is responsible for ensuring NASA has appointed a FOIA Public Liaison, who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes at each Center or Component.

§ 1206.802 General Counsel.

The General Counsel is responsible for the interpretation of 5 U.S.C. 552 and of this part, as well as providing legal guidance with regard to disclosure of Agency records. The General Counsel is also responsible for the handling of appeals and litigation in connection with a request for an Agency record under this part.

§ 1206.803 NASA Headquarters.

Except as otherwise provided under this subpart, the Deputy Associate Administrator for Communications is responsible for the following:

- (a) Delegating the authority for direct oversight of the Headquarters FOIA Office to the Principal Agency FOIA Officer.
- (b) When denying records in whole or in part, ensuring the Headquarters FOIA Office consults with the General Counsel charged with providing legal advice to Headquarters before releasing an initial determination under § 1206.307.

§ 1206.804 NASA Centers and Components.

Except as otherwise provided in this subpart, in coordination with the Deputy Associate Administrator for Communications, the Director of each NASA Center or the Official-in-Charge of each Center, is responsible for ensuring the following:

- (a) The Director of Public Affairs or the Head of the Public Affairs Office at the Center has delegated authority to process all FOIA requests at their respective Center.
- (b) This delegated authority has further been delegated to the FOIA Officer at their Center or in the absence of a FOIA Officer, the FOIA Specialist, both of whom must report to and be supervised by their Director of Public Affairs or the Head of the Public Affairs Office.
- (c) When denying records in whole or in part, the FOIA Officer at the Center will consult with the Chief Counsel or the Counsel charged with providing legal advice to that FOIA office before releasing an initial determination under § 1206.307.

§ 1206.805 Inspector General.

- (a) The Inspector General or designee is responsible for making final determinations under § 1206.701, within the time limits specified in subpart G of this part, concerning audit, inspection and investigative records originating in the Office of the Inspector General

records from outside the Government related to an audit, inspection or investigation, records prepared in response to a request from or addressed to the Office of the Inspector General, or other records originating within the Office of the Inspector General, after consultation with the General Counsel or designee on an appeal of an initial determination to the Inspector General.

- (b) The Assistant Inspectors General or their designees are responsible for making initial determinations under subpart C concerning Office of Inspector General records originating in the Office of the Inspector General, records from outside the Government related to Office of Inspector General records prepared in response to a request from or addressed to the Office of the Inspector General, or other records originating with the Office of the Inspector General, after consultation with the Counsel to the Inspector General or designee.
- (c) The Inspector General or designee is responsible for ensuring that requests for Agency records as specified in paragraphs (a) and (b) of this section are processed and initial determinations are made within the time limits specified in subpart D of this part.
- (d) The Inspector General or designee is responsible for determining whether unusual circumstances exist under § 1206.403 that would justify extending the time limit for an initial or final determination, for records as specified in paragraphs (a) and (b) of this section.
- (e) Records as specified in paragraphs (a) and (b) of this section include any records located at Regional and field Inspector General Offices, as well as records located at the Headquarters Office of the Inspector General.

Subpart I - Location for Inspection and Request of Agency Records

§ 1206.900 FOIA offices and electronic libraries.

- (a) NASA Headquarters and each NASA Center have a FOIA Electronic Library on the Internet. The Electronic library addresses are located on the NASA FOIA homepage <http://www.hq.nasa.gov/office/pao/FOIA/agency/>
- (b) In addition, a requester may submit a FOIA request electronically. The addresses are located on the NASA FOIA homepage under each Center link.

Cheryl E. Parker
Federal Register Liaison Officer

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A

NASA FOIA Requester Service Center Addresses

NASA Ames Research Center
FOIA Requester Service Center
Mail Stop 204-14, Moffett Field, CA 94035
foia@arc.nasa.gov
FAX (650) 604-0688

NASA Armstrong Flight Research Center
FOIA Requester Service Center
Post Office Box 273, Edwards, CA 93523
afrc-foia@nasa.gov
FAX (661) 276-3088

NASA Glenn Research Center
FOIA Requester Service Center
21000 Brookpark Road, Cleveland, OH 44135
foia@grc.nasa.gov
FAX (216) 433-6790

NASA Goddard Space Flight Center
FOIA Requester Service Center
Greenbelt, MD 20771
gsfc-foia@mail.nasa.gov
FAX (301) 286-1712

NASA Headquarters
FOIA Requester Service Center
Mail Stop 5-L19, 300 E Street, SW, Washington, DC 20546
hq-foia@nasa.gov
FAX (202) 358-4332

NASA Office of the Inspector General
FOIA Requester Service Center
Mail Stop 8-V69, 300 E Street, SW, Washington, DC 20546
foiaoig@hq.nasa.gov
FAX (202) 358-2767

NASA Management Office – Jet Propulsion Laboratory
FOIA Requester Service Center
4800 Oak Grove Drive, Pasadena, CA 91109
jpl-foia@nasa.gov

FAX (818) 393-3160

NASA Johnson Space Center
FOIA Requester Service Center
Houston, TX 77058
jsc-foia@mail.nasa.gov
FAX (281) 483-3741

NASA Kennedy Space Center
FOIA Requester Service Center
Kennedy Space Center, FL 32899
foia@ksc.nasa.gov
FAX (321) 867-2692

NASA Langley Research Center
FOIA Requester Service Center
Hampton, VA 23681
larc-dl-foia@mail.nasa.gov
FAX (757) 864-6333

NASA Marshall Space Flight Center
FOIA Requester Service Center
Huntsville, AL 35812
foia@msfc.nasa.gov
FAX (256) 544-0007

NASA Stennis Space Center
FOIA Requester Service Center
Stennis Space Center, MS 39529
ssc-foia@nasa.gov
FAX (228) 688-1094

NASA Shared Services Center
FOIA Requester Service Center,
Bldg 5100, Stennis Space Center, MS 39529
nssc@nasa.gov
FAX (877) 779-6772

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